Quarterly Report

of the

ATTORNEY GENERAL

of

ALABAMA

For the Period

From October 1, 1965

Through December 31, 1965

VOLUME 121

RICHMOND M. FLOWERS, Attorney General

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QUARTERLY REPORT

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TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF ALABAMA:

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from October 1, 1965 through December 31, 1965, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy or county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

RICHMOND M. FLOWERS

Attorney General

RICHMOND M. FLOWERS
Attorney General

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OPINIONS

October 18,1965

Honorable Bradley Brown
Director
Department of Revenue
Jefferson County Courthouse
Birmingham, Alabama

Licenses — Small Trailers and Semi-Trailers

1. Where a small trailer or semi-trailer which is pulled by a passenger car is used to transport fifteen hundred pounds or more, then under Title 51, Section 703, Code of Alabama 1940, Recompiled 1958, a license tax of fifty percent of the cost of the license tag required as to said passenger car would be due as to said small trailer or semi-trailer.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion bearing date of August 10, 1965, is as follows:

"Reference is made to your opinion under date of July 26, 1965, addressed to the Hon. Phillip J. Hamm, in regard to the so-called collapsible camping trailers.

"We would like your official opinion as to the proper class of tag that should be issued for a small trailer or semi-trailer attached to and pulled by a passenger car, which is used in transporting fifteen hundred pounds or more.

"Your clarification on this question will be appreciated."

In my opinion, a license of one-half the amount of the license required for the passenger car which pulls the small trailer or semi-trailer would be due for such a trailer or semi-trailer, where it is used to transport fifteen hundred pounds or more, and your question is answered accordingly.

Title 51, Section 703, Code of Alabama 1940, Recompiled 1958, provides a basis for the license tax on small trailers and semi-trailers, as follows:

"Every small trailer and semi-trailer subject to a license shall pay a license tax of fifty percent of the cost of the license tax of the motor vehicle by which it is drawn."

The only exception to this, except the one pertaining to trailers used exclusively for the purpose of hauling farm products raised by farmers, which trailers are exempt from the license, but which does not appear to be pertinent to your inquiry in this case, is the following one also contained in Section 703, supra:

"Small trailers attached to passenger cars, which are used for transporting of less than fifteen hundred pounds are exempt from paying any license."

It will be noted that this exception applies only where the small trailer or semi-trailer is **"attached to passenger cars,"** and where such trailers are used for transporting less than fifteen hundred pounds. The exception does not apply at all to small trailers or semi-trailers which are attached to trucks.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

October 18, 1965

Honorable W. H. Knight
Judge of Probate
Hale County Court House
Greensboro, Alabama

Licenses — License Tags — Motor Vehicles.

1. In order to be qualified under Title 51, Section 693(2), Code of Alabama 1940, Recompiled 1958, for the three-dollar tag for "pick-ups" or "pick-up trucks," the pick-up truck must be the only method or mode of transportation owned by the applicant or available for his use in the household in which he resides.

2. Even the occasional or isolated use by the applicant of an automobile belonging to his wife, residing in the same household, would, under Section 693(2), supra, con-

stitute another vehicle available for his use so as to disqualify him for the three-dollar tag for his pick-up truck.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion bearing date of September 29, 1965, is as follows:

"Please give us an opinion at the earliest possible time on the following:

" 'Is a husband who owns a pickup truck eligible for a $3.00 pickup truck tag if his wife owns a car and uses the car for her work? The husband contends that the car of his wife is not available for his use. They live together.' "

The answer to your question would depend on the actual facts in each specific case. You have not given me all of the necessary facts in this case, but I believe that by my reviewing the requirements under the statute and principles which have already been held to be applicable that you will be able to resolve this problem yourself upon being given all of the facts by the applicant.

A similar question was submitted to this office among other inquiries, in the request for the opinion which is reported in Quarterly Report of the Attorney General, Volume 81, page 7. In that case this office answered this inquiry, as follows:

"Section 1 of Act No. 775, General and Local Acts 1953, page 1046 [Title 51, Section 693(2), Code of Alabama 1940, Recompiled 1958], provides as follows:

" 'Section 1. Any other provisions of law to the contrary notwithstanding, the license and registration fee on motor vehicles designated as motor trucks which have a box or express type body of three-fourths of a ton capacity or less, and commonly known as "pickups" or "pick-up trucks" shall be Three Dollars ($3.00). Provided, however, any applicant for such motor vehicle license shall, upon making application for same, execute, under oath, a statement in writing to the officer issuing such license reciting that **such applicant is the owner of the vehicle and that such vehicle is the only mode or method of transportation owned by the applicant or available for his use in the household in which the applicant resides.'** (Emphasis supplied.)

"In an opinion of this office reported in Quarterly Report of Attorney General, Vol. 73, page 41, dealing with the statute in question, it was stated:

" 'Under the very terms of the law itself, the three dollar tag is confined to a pick-up truck which is the only mode or method of transportation owned by the applicant or available for his use in the household in which he resides. **This seems to clearly indicate that only one pick-up truck is contemplated and that if the applicant for a three dollar tag owns or has available for his use in the household in which he resides another pick-up truck or any other means of transportation, then he would not be eligible for the three dollar tag on any of his pick-up trucks. . . .'** (Emphasis supplied.)

"In regard to the first two situations presented in your inquiry, the question of the availability of other transportation for the use of the applicant in his household is one of fact. It is conceivable, although very improbable, that an automobile owned by the wife or son of an applicant, residing at the home of the applicant, would not be available for use by the applicant. **If such an applicant is willing to execute the required affidavit, subjecting himself to criminal prosecution in the event it were not true, I think the probate judge may properly issue the three dollar tag in question. Even the applicant's occasional or isolated use of the automobile of his wife or son would place such an automobile in the availability category."** (Emphasis supplied.)

It will be noted then that the automobile of his wife, residing in the same household, does not have to be available for his use at all times, for even an "occasional or isolated use" of such automobile would serve to disqualify him for the three dollar tag for pick-up trucks.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

October 20, 1965

Honorable W. W. Malone, Jr.
City Attorney
City of Athens
Athens, Alabama

Expenses — Constitutionality — Municipalities.

A municipal council may, by ordinance, authorize a flat

monthly expense allowance for the mayor as reimbursement for expenses incurred in the performance of his duties when the amount of such allowance bears a reasonable and substantial relationship to the actual expenses incurred.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion, under date of September 30, 1965, is as follows:

"An opinion is requested by the undersigned as the City Attorney for the City of Athens, Alabama, in connection with the following:

"The Mayor of the City of Athens furnishes his own automobile for official use of the City, together with fuel for the same.

"The Mayor incurs additional expenses by having to travel from project to project and go out of town on official business and entertain in his official capacity as the Mayor of the City.

"In connection with the above, the Mayor incurs considerable expense in and about the use of his automobile, traveling and entertaining:

"Your opinion is respectfully requested as to whether the City Council may adopt and enact an ordinance authorizing a flat monthly expense allowance for the Mayor as reimbursement for expenses incurred in the performance of his duties when said amount bears a reasonable and substantial relationship to actual expenses incurred."

The municipal legislative powers and the management and control of the financial affairs of the City of Athens are vested in the city council by Title 37, Section 429, Code of Alabama 1940, as amended by Act No. 666, Acts of Alabama 1961, page 910.

The question presented by your request is whether the contemplated action of the Council of the City of Athens will violate the Constitution of Alabama 1901, Section 68, Section 281 or Amendment 92, which prohibit an increase in the compensation of a public officer during his term of office.

This office has held, in considering legislative enactments, that a flat expense allowance, if based upon a reimbursement to the officer concerned for expense incurred by him in the performance of his official duties and bearing a reasonable and substantially accurate rela-

tionship to the actual expenses incurred, is not considered as an increase in compensation within the meaning of the above-cited constitutional provisions and may be given to said officer during his term. Quarterly Report of Attorney General, Volume 113, page 27, and authorities there cited. See also opinion to Honorable W. Cecil Johnson, Judge of Probate, Clarke County, under date of August 18, 1965.

The above-cited opinions control the question presented by your request.

Therefore, I am of the opinion that the Council of the City of Athens may, by ordinance, authorize a flat monthly expense allowance for the Mayor of said City as reimbursement for expenses incurred in the performance of his duties if the amount authorized bears a reasonable and substantial relationship to the actual expenses incurred by said Mayor.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

October 23, 1965

Honorable Charles L. Patterson
Tax Assessor, Chilton County
County Court House
Clanton, Alabama

Ad Valorem Taxes — Motor Vehicles — Assessments — Tax Lien

1. Tax lien under Title 51, Section 884, Code of Alabama 1940, Recompiled 1958, applies in the case of ad valorem taxes on automobiles, as well as on other property, and the lien itself covers all of the property owned by the taxpayer and it attaches automatically and by operation of law at the time that said taxes become assessable and said lien continues in effect from that time until the taxes are paid.

2. Said tax lien can be enforced and said taxes upon becoming delinquent can be collected by the tax collector under the usual procedure prescribed for levies and sales for the collection of delinquent ad valorem taxes in Sec-

tion 201 and 217 and otherwise in Title 51, Chapter 12, Code of Alabama 1940, Recompiled 1958.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion bearing date of September 18, 1965, is as follows:

"During the past year I have had several assessments of automobiles wherein the dealer sold the automobile as a new car, and no tax was charged or assessed against the same as the bill of sales showed that it was a new car. However, when the auditors started making an examination of my office, they found that instead of these automobiles being new cars, that they had been sold previously at which time they were exempt from tax, and should not have been resold at the later date showing they were new cars to be exempt from tax.

"The question I would like answered is whether or not, under Title 51, Section 704, I could place a lien against the automobile for ad valorem tax due on the same.

"If I could not, then what steps should I take to collect this amount?"

At the outset it is well to note that ad valorem taxes on all property, real and personal, including motor vehicles, as a general rule and under Title 51, Sections 37 and 884, Code of Alabama 1940, Recompiled 1958, are assessable on October 1, the "law day," at the beginning of the tax year, although such taxes are not payable until the end of the year and on the following October 1. Quarterly Reports of the Attorney General, Volumes 96 and 76, pages 44 and 58, respectively. However, under the 1961 Amendment to Section 704, as amended, Title 51, supra, which is applicable only to motor vehicles, the "law day" has been extended in cases where motor vehicles are brought into the State for the first time, or in the case of new vehicles which have never been licensed and which are sold during the tax year from the stock of a dealer, to include the date that a motor vehicle is first brought into the state or sold new from a dealer's stock in this State. In such cases and under Section 704, as amended, supra, the tax is to be paid on a quarterly basis on the following October 1, depending on the date and the month during the tax year when the vehicle was first brought into the State or was sold new from a dealer's stock in this State. The tax, though, is assessable and the lien under Section 884, supra, attaches immediately upon the motor vehicle being brought into the State or sold new from the dealer's stock although no ad valorem

tax is to be paid until the following October 1. Quarterly Report of the Attorney General, Volume 110, page 24.

As I understand the facts as presented by you, the "used" cars, which were misrepresented to be "new" cars, had been in the State for a period of time and were actually subject to assessment as any other used cars would be, and probably in the usual manner by having been owned by a licensee in this State on October 1, at the beginning of the tax year. However, as you do not state for how long a time or give me the other particulars, this cannot be positively assumed.

Under the foregoing circumstances, your question is answered to the effect that under Title 51, Section 884, Code of Alabama 1940, Recompiled 1958, the tax lien attached immediately at the time that each of the automobiles involved became assessable, whether under the general provisions of Section 37, supra, or the special provisions relating to automobiles in Section 704, as amended, supra. **United States v. Alabama,** 313 U. S. 274, 61 S. Ct. 1011. Moreover, the tax lien in this respect not only covered the automobiles, but it also covered all of the other property, real and personal, of the licensees of the automobiles and taxpayers.

It is not necessary then for you to place a lien on the automobiles and other property of the taxpayers for the collection of the delinquent ad valorem taxes due on these automobiles as the lien under Title 51, Section 884, supra, automatically attached on the automobiles and the other property of the taxpayers immediately upon the ad valorem taxes on such vehicles becoming assessable. **United States v. Alabama, supra.** Section 884, supra, also provides that this lien is to be superior to all other liens and is to continue until such taxes are paid. Quarterly Reports of the Attorney General, Volumes 59 and 104, pages 11 and 41, respectively.

The tax lien under Section 884 is against the automobiles and also the other property of the taxpayers and the lien in such cases remains on the automobiles and other property until it is extinguished by the delinquent taxes being paid. You can, therefore, levy on said automobiles for the collection of the taxes due, or if necessary the other property belonging to the taxpayers, in order to collect the taxes under the usual procedure, and sell them for the payment of such taxes, even though the automobiles have been sold or transferred by the taxpayers to third parties. The lien having attached under Section 884, supra, it also makes no difference that after the taxes were assessable on the automobiles that the "used" automobiles passed through a dealer's inventories during the same tax year, as this did not under the circumstances affect the assessment against the taxpayer or remove the lien. Quarterly Report of the Attorney General, Volume 104, page 41.

Section 201, et seq., Chapter 12, Title 51, Code of Alabama 1940, Recompiled 1958, provide the procedures to be followed by the tax collector in levying on and selling the property of a taxpayer for the collection of delinquent ad valorem taxes, which would include delinquent taxes on automobiles as well as on other property. Special attention is also called to Title 51, Section 217, supra, and the procedure prescribed in this respect, which might prove helpful under the circumstances.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

October 27, 1965

Honorable B. R. Winstead, Jr.
Director of Finance
City of Birmingham
205 City Hall
Birmingham, Alabama

Contracts — Municipalities — United States.

The City of Birmingham may enter into a contract with a nonprofit corporation under which said corporation agrees to protect the interest and promote the well-being of said City in its relations with the dedepartments and agencies of the United States Government.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, under date of October 6, 1965, is as follows:

"Enclosed is a copy of a contract entered into between the City of Birmingham and Birmingham Downtown Improvement Association. It provides for the performance of certain services by Birmingham Downtown Improvement Association and the payment therefor by the City of Birmingham. The contract may be terminated by either party on thirty days notice.

"The execution of this contract was authorized by resolution of the Council of the City of Birmingham.

"As Director of Finance of the City of Birmingham, I request your opinion as to whether or not I may legally pay to Birmingham Downtown Improvement Association the consideration provided for in paragraph numbered 2 of the contract.

"In connection with this request, I am also enclosing a letter addressed to you from Mr. J. M. Breckinridge, City Attorney for the City of Birmingham."

Paragraph 1 of the contract entered into by the City of Birmingham and the Birmingham Downtown Improvement Association, a non-profit corporation, reads as follows:

"BDIA will maintain in the City of Birmingham an office to be known as its Operation New Birmingham Office. BDIA will keep and maintain one or more employees available for conferences and contacts in the City of Washington, D. C. Acting by and through its employees in Birmingham and in Washington, and through such other assistance as BDIA is able to marshall, BDIA will keep informed as to the status of all Federal Aid programs which may be available for participation therein by the City and give such information to City upon request. BDIA when requested by City will obtain from Federal offices, agencies and others such information as City may need in the preparation of applications by City for Federal Aid programs. BDIA, to the extent that it is able to do so, will arrange for such conferences, meetings and discussions with Federal officials and others relative to Federal Aid as City may request. BDIA, through its employees, will maintain liaison with Federal agencies, offices and officers where it is in the interest of the City to do so, and will to the best of its ability protect and further the interest of City. BDIA will keep informed as to the activities of other cities in relation to Federal Aid programs to the best of its ability and will keep City advised of same. BDIA will conduct such research as City may request in connection with any Federal Aid which may be available to City."

The governing body of the City of Birmingham was organized under and is controlled by the provisions of Act No. 452, Acts of Alabama 1955, page 1004. Quarterly Reports of Attorney General, Volume 111, page 80; Volume 112, page 24; and Volume 116, page 18.

Section 3.07 of Act No. 452, supra, vests all municipal legislative powers and the management and control of financial affairs of the City of Birmingham in its Council. See also Section 2.03 of said Act

and Title 37, Section 429, Code of Alabama 1940, as amended by Act No. 666, Acts of Alabama 1961, page 910.

This office held in the opinion reported in Quarterly Report of Attorney General, Volume 94, page 10, that a municipality may join with the county and contract with a private enterprise for an industrial survey and a critical analysis of the community as a step toward obtaining industries.

We have also held that a municipality may enter into a contract with a private firm for the collection, disposal and destruction of garbage if such contract does not extend beyond the term of office of the municipal governing body and tie the hands of the successor governing body. Quarterly Report of Attorney General, Volume 110, page 42.

In the case of **Fitts v. Commission of City of Birmingham, et al,** 224 Ala. 600, 141 So. 354, the Supreme Court of Alabama held that a municipality is authorized to employ individuals to protect and promote its well-being before the State legislature.

Based upon the authorities cited herein, I am of the opinion that the City of Birmingham was authorized to enter into the contract to which your request refers.

Therefore, you are advised that you are required to pay to the Birmingham Downtown Improvement Association the consideration for which said contract provides.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

October 28, 1965

Honorable George A. Toulmin
License Commissioner
Mobile County
Post Office Box 91
Mobile, Alabama 36601

Licenses — Motor Vehicles — Transfers

1. Act No. 201 of the First Special Session of the Alabama Legislature of 1965, approved April 20, 1965, which further amends Title 51, Section 706, as amended,

Code of Alabama 1940, Recompiled 1958, became effective on October 1, 1965, at the beginning of the 1966 tax year for the collection of motor vehicle licenses, and insofar as Mobile County is concerned the requirement of said Act that transfers of ownership of motor vehicles be reported within ten days from the date of transfer subject to a penalty of $1.50 for noncompliance, did not apply to or affect transfers of motor vehicles made prior to October 1, 1965.

2. Transfers of ownership of motor vehicles made on or after October 1, 1965, are all subject to said requirement of Act No. 201, supra, and said transfers must be reported within ten days from the date of transfer or the transferee will be subject to the $1.50 penalty.

3. Under the regular registration laws of this State and Title 51, Section 706, as amended, Code of Alabama 1940, Recompiled 1958, in either of the events referred to in headnotes 1 and 2, the transferee should report the transfer before he applies for his 1966 tag, even though the ten days for reporting the transfer have not expired, and the Commissioner of Licenses should not issue the new tag without proof of such transfer and the reporting of same.

4. Commissioners of Licenses and Judges of Probate not being specifically mentioned in their said official capacities in the criminal provisions of Act No. 201, supra, cannot be included or read into the word "person," as it is used in said penal provisions.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion bearing date of October 14, 1965, is as follows:

"Reference is made to the provisions of Section 706, Title 51, of the Code of Alabama, 1940; Recompiled, 1958, and the amendment thereto contained in Act Number 201 (S. 45-Tyson) passed during the Special Session of the Alabama Legislature and approved by the Governor of Alabama on April 20, 1965. The amendment just above referred to places Mobile County in a category where it is materially affected by the specific provisions of Section 706(d) of said bill as well as by the other sections thereof which, to me, do

not seem to have been otherwise repealed or affected by such 1965 amendment. Therefore, may I have your official opinion bearing on the following questions:

"1(a). Since Mobile County has a population of more than 300,000 according to the last federal census, and the license commissioner of such county is required by law to perform the duties of the probate judge in all matters having to do with the issuing of all state and county licenses in Mobile County, except marriage licenses; when does the $1.50 penalty for failure to transfer within ten days become effective, if the new owner of a used motor vehicle acquired the same prior to October 1, 1965, but failed to transfer the same within ten days after October 1, 1965, the effective date of Act No. 201, supra?

"1(b). Also, when did, or will, such penalty become effective if the new owner acquired the used motor vehicle on or subsequent to October 1, 1965, but such motor vehicle has not been transferred prior to the date of application for 1966 license and tag?

"2. Is the license commissioner for Mobile County liable to the criminal prosecution provided in the last paragraph of subsection (d) of Section 706 of Title 51, as amended by Act No. 201, supra, if such license commissioner fails to collect any of the fees and penalties provided for in such, as amended?

"I shall greatly appreciate an early reply since we are in the midst of our annual license renewal season and need to have your opinion on the above subjects."

Your questions in accordance with the numbers you have given them, and in that order, are answered as follows:

At the outset your attention is called to the fact that a similar provision to the requirement that transfers be reported in ten days or the transferee be subject to a $1.50 penalty was contained in Title 51, Section 706, as amended, supra, but prior to the effective date of Act No. 201, supra, on October 1, 1965, such provision applied only to Jefferson County or counties having a population of 500,000 or more. It was only after the enactment of Act No. 201, and the effective date of that Act on October 1, 1965, that such a requirement became applicable to Mobile County or any other county in this State having a population of 300,000 or more according to the latest census.

1(a). Act No. 201 of the First Special Session of 1965, approved April 20, 1965, and which further amends Title 51, Section 706, as amended, Code of Alabama 1940, Recompiled 1958, became effective on October 1, 1965, which was the first day of the new or 1966 tax year for the collection of motor vehicle licenses. The provisions of the Act

are not retroactive nor can they be given that effect. Therefore, insofar as Mobile County is concerned transfers of ownership of motor vehicles which were made prior to the effective date of the Act or prior to October 1, 1965, would not be covered or affected by the Act, and particularly is this true as to the requirement that such transfers be reported within ten days from the date of transfer or the transferee be subject to a penalty of $1.50.

The transferee, where the transfer was made prior to October 1, 1965, can purchase a 1966 license tag without paying the $1.50 penalty prescribed under Section 1(d) of the Act, where he does not report the transfer in ten days or where he fails to report it at all prior to applying for his 1966 tag. However, under the regular registration laws of this State and particularly Title 51, Section 706, supra, even prior to the 1965 Amendment by Act No. 201, supra, in my contemplation, even though the transferee would not be subject to the $1.50 penalty, he is required to report the transfer and furnish you with proof thereof at the time that he applies for his 1966 tag and before you can issue the new tag to him.

1(b). If a transfer was made on or after October 1, 1965, which is not only the effective day of Act No. 201, supra, but is also the first day of the new license tax year, such transfer would be subject to the provisions of the Act, and the transferee would have to report the transfer within the ten days or be subject to the $1.50 penalty.

The fact that the transfer might have been made during the forty-five day grace period between October 1, 1965 and November 15, 1965, during which time the license tag can be purchased without the fifteen percent penalty for delinquency, would in no respect excuse the transferee, where the transfer is made on or after October 1, 1965, from paying the $1.50 penalty for not reporting the transfer within ten days from the date of transfer as is required in Section 1(d) of Act No. 201.

In such cases the transfer also must be reported by the transferee, and proof furnished to you of such transfer upon his applying for the 1966 tag, before you can issue the new tag to him.

2. Your question designated as "2" is answered in the negative.

The criminal provisions of Act No. 201, supra, to which you refer are, as follows:

"'Any person failing to perform the duty required of him by the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five

dollars ($25.00) nor more than one hundred dollars ($100.00) for each offense.' "

It appears that the word "person" as is used in the penal provisions, when read with Act No. 201 in its entirety, applies only to the old or new owner of the vehicle or the transferor or the transferee. The term "person" in relationship to the Revenue Laws, and as defined in Title 51, Section 1, Code of Alabama 1940, Recompiled 1958, is said to include firms, partnerships, companies, associations, corporations, trustees and receivers. In my opinion then for Commissioners of Licenses or Probate Judges to be included within said penal provisions, such state and county officials would have to be expressly mentioned in their said official capacities in such statutes. The general rule is that the State and state officials, as such, and in their official capacities as state officers, are not covered by a statute unless specifically mentioned therein. **State v. McCord,** 203 Ala. 347, 83 So. 71, 72, **Ex parte McDonald,** 76 Ala. 603, **State ex rel. Lott v. Brewer Allen,** 71 Ala. 543, among others.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

October 29, 1965

Hon. Walter S. Houseal
Superintendent of Insurance
Department of Insurance
CAPITOL

Insurance — Licenses — Taxation.

1. Those soliciting membership in Nationwide Motor Clubs are required to be licensed as agents for the respective lines and for the admitted insurors named in the master policies.

2. Gross premium taxes, in such cases, are to be paid to the State of Alabama by the admitted insurers on risks in this State for bail bond protection and personal travel accident coverage.

Opinion by Assistant Attorney General Clark.

Dear Sir:

Your request for an official opinion, bearing date of October 22, 1965, reads as follows:

"I am enclosing a file of correspondence which sets out in full the projected operations in Alabama of the Nationwide Motorist Association, Inc., of Rolling Meadows, Illinois. You will find that this organization proposes to offer certain services to members of motor clubs which are to be established under the company's dealership agreement with certain so-called 'franchise owners' throughout the state.

"Among the services to be offered club members are bail bond protection, which is to be underwritten through the National Surety Company, and personal travel accident insurance, to be underwritten through the Fireman's Fund Insurance Company. Both of these companies are licensed in Alabama for these respective lines of insurance. These coverages are underwritten through master policies, the consummation of which is negotiated for outside the State of Alabama.

"I would appreciate your opinion as to the following aspects of the program as herein proposed by the Nationwide Motorist Association:

"1. Under our insurance laws is it necessary that those who solicit membership in these clubs be licensed as agents for the respective lines and for the admitted insurers named in the master policies?

"2. Are the premium taxes required by our insurance laws to be paid by the admitted insurers referred to herein to the State of Alabama on the premiums paid in Alabama for the bail bond protection and the personal travel accident coverage?"

The answer to your question is based upon whether membership in Nationwide Motor Clubs is a contract of insurance.

Title 28, Section 2, Code of Alabama 1940, defines a contract of insurance as follows:

"§ 2. Contract of insurance defined.—A contract of insurance is an agreement, expressed or implied, by which one party, for a consideration, promises to pay money, or its equivalent, or to do some act of value to the assured, upon the destruction or injury of something in which the other party has an insurable interest."

But the payment of money has been extended to burial benefits instead of money and considered contracts of insurance. **Commissioner of Internal Revenue v. Luquire Burial Association Co.,** 102 F. 2d 88. This would indicate that the payment, based upon the happening of any certain named event, need not be of money to constitute insurance, but could be payment in services.

In an early opinion, it was ruled that agents soliciting membership in Alabama Motorists Association which has group insurance for its members are not required to pay an agent's license. Biennial Report of Attorney General, 1928-1930, page 372.

The above holding was based on the fact that the very limited group policy was merely incidental to such membership.

Every request of this kind must be considered according to the facts in each particular case and the statutes construed with those facts.

Your attention is directed to an informal opinion of this office dated February 7, 1962, wherein it was held:

> "I am of the opinion that membership certificates of Safety Automobile Service Club, Inc., Birmingham, Alabama, and the H & C Auto Club, Atlanta, Georgia, are each contracts of insurance. They have a few service provisions which are not classified as insurance, but those provisions providing for reimbursement for repairs towing, legal services, etc., come within the definition of insurance and therefore are subject to regulation by you."

The correspondence submitted with your present request has been examined.

It is noted that there is a bail bond provision for members. Also, there is a group accident policy on members with accidental death coverage of $10,000.00, and dismemberment and loss of sight indemnity, hospital indemnity, and ambulance expense.

Provision is made for emergency service to a member's automobile at no cost at any NMA service station or garage in that vicinity. If there is no member service station or garage in the vicinity, a club member may be reimbursed for such repairs made at any service station or garage of his choosing. These reimbursement provisions come within the definition of insurance.

After study of the correspondence and brochure, I am of the opinion that while there are some service provisions accruing to such members which are not insurance, those provisions for reimbursement for

emergency services, bail bond, and accident insurance are more than a mere incident to the main purpose of club membership. These club memberships are contracts of insurance, subject to regulation by you.

Those who solicit membership in Nationwide Motor Clubs are required to be licensed as agents for the respective lines and for the admitted insurors named in the master policies pursuant to provisions of insurance law regulating agents as set out in Chapter 3 of Title 28, Code of Alabama 1940, as amended.

Article 12 of Title 51, Code of Alabama 1940, as amended, provides for the premium taxes to be paid by insurance companies.

Title 51, Section 812, Code of Alabama 1940, as amended, provides, in part, as follows:

"§ 812. Definitions . . . .

"(1) The term 'insurance company,' as used in this article, shall include fire, life, benefit, accident, indemnity, fidelity, surety, guaranty, employer's liability, casualty, plate glass, burglary, automobile, tornado, cyclone, mutual aid or industrial company or association, reciprocal exchanges, or fraternal benefit societies or associations, or any other insurance company or association or society charging a premium for contracts entered into by such companies, associations, or societies. Provided however, the exemptions granted in Title 28, Chapter 9, Code of Alabama 1940 are applicable hereto and not included in this definition for societies or associations for which a license is not required to do business.

. . . . . .

"(4) The term 'premiums,' as used in this article, shall include all amounts received in cash or otherwise on risks in this state as consideration for insurance contracts, less: (a) Insurance premiums returned, (b) reinsurance premiums from companies authorized to do business in Alabama and subject to the premium tax provided for in this article, and (c) dividends paid, applied, or left with the company to accumulate interest."

In the instances set out in your request, the motor clubs sell contracts of insurance. For payment on such contracts premiums are paid.

In my opinion, the monies paid on such contracts are premiums

within the meaning of Title 51, Section 812(4), supra, and are taxable as such.

My answer to your second question is also in the affirmative.

Yours very truly,

RICHMOND M. FLOWERS
Attorney General

November 8, 1965

Honorable Guy Hunt
Judge of Probate
Cullman County Court House
Cullman, Alabama

Licenses — Transient Dealers.

1. Under the next to the last proviso contained in Title 51, Section 609, Code of Alabama 1940, Recompiled 1958, a person engaged in the business of selling goods, wares and merchandise from a truck or other vehicle and by going from dealer to dealer, place to place, etc., as is provided in the statute, must pay, where such a license is levied by statute, the license for the privilege of selling a specific commodity, where sold off the same vehicle, in addition to paying the transient dealer's license in each county in this State in which he sells the articles and merchandise off the vehicle, provided that the license for selling a specific item or commodity in the county is a higher one than the transient dealer's license.

2. Thus, under said proviso, where, in any county, the license for the privilege of selling a specific commodity or commodities is higher than the transient dealer's license, then in that county both licenses would be due. On the other hand in any county where the license for selling a specific commodity or commodities is less than the transient dealer's license then only the transient dealer's license would be due in that county for selling off the particular vehicle. ular vehicle.

3. Whether more than one license would be due then in any particular county for selling off the vehicle in that

county would have to be determined by the facts and the price of the specific licenses, if any are called for, compared with the price of the transient dealer's license in that particular county.

4. All former opinions of this office which are in conflict with this opinion are hereby amended and modified to the extent of such conflict and to conform with this opinion.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion bearing date of October 11, 1965, is as follows:

"If a person obtains a license as a transient dealer under Section 609, Code of Alabama 1940, must he also obtain a license under Section 508, Dice Dealers, to be able to sell imperfect dice for games? If a person obtains a license as a transient dealer under Section 609, Code of Alabama 1940, must he purchase a license under Section 578, to sell radios in cities under 50,000 population?

"I have noted the language of Section 609, which seems to exempt said person from both Section 508 and Section 578 as follows 'Provided, that the payment of the privilege license required by this section shall not authorize any transient dealer to sell any goods, wares or merchandise for which a higher license is required without the payment of the higher license.' However, this person has been threatened by a citation from a license examiner if he fails to purchase license under Section 508 and Section 578 of Title 51, in addition to Section 609. He desires to comply with the law.

"Your opinion to clear up this misunderstanding would be greatly appreciated."

The license under Title 51, Section 609, Code of Alabama 1940, Recompiled 1958, is levied on a transient dealer, and for the privilege of such dealer engaging in the business of selling at wholesale goods, wares and merchandise as a transient and by going from person to person, dealer to dealer, place to place, etc., and where the merchandise is sold off a truck or other vehicle, and delivery is made at the time from the truck or other vehicle.

In reading and considering this statute in its entirety it seems apparent that the legislature intended that the license tax on transient dealers be levied in addition to any other licenses which might be applicable for the privilege of selling some specific article or commodities

such as radios, batteries, automobile accessories, malt drinks, etc., which is considered as a separate or different privilege. In fact, in construing the transient dealer license in relationship with other licenses levied on the privilege of selling some specific commodity, this office has held this to be the case in several opinions. Biennial Report of the Attorney General for 1936-1938, pages 155 and 668, respectively; Quarterly Report of Attorney General, Volume 17, page 49; and Quarterly Report of Attorney General, Volumes 112 and 116, pages 17 and 59, respectively. See also Title 51, Section 839, Code 1940, Recompiled 1958, and **State v. Woodham,** (decided June 18, 1964), 166 So. 2d 391, 394.

These opinions treat transient dealers selling at wholesale from their trucks or vehicles as having a place of business in the County involved, holding each vehicle under the circumstances to constitute a separate place of business. And this is particularly true where a stock of goods and merchandise is carried on the vehicle, and where delivery is made from the vehicle at the time the merchandise is sold. Biennial Report of the Attorney General for 1936-1938, pages 668, 669; Quarterly Reports of the Attorney General, Volume 1, page 225, Volume 11, page 126, Volume 17, page 49, Volume 112, pages 17, 19, and Volume 116, pages 63, 65. Also see **State v. Coca Cola Bottling Works,** 29 Ala. App. 508, 198 So. 363.

Under these opinions then where a license is provided for the privilege of selling some specific commodity, and that commodity is carried and sold from the truck, then the license or licenses for selling such specific commodity or commodities, as the case might be, would be due as to the sales made off the vehicle, in addition to the transient dealer's license levied under Title 51, Section 609, supra, and on a different or separate privilege.

An exception to the foregoing could be made by statute, and by a certain license schedule expressly providing otherwise. Section 609 of Title 51, supra, in this respect contains the proviso to which you refer, and which provides, as follows:

> "Provided, that the payment of the privilege license required by this section shall not authorize any transient dealer to sell any goods, wares, or merchandise for which a higher license is required without the payment of the higher license."

Actually there is no indication that this proviso has ever been construed before by this office, or by the State Department of Revenue in enforcing the statute levying the license on transient dealers. And this appears to be true even though the proviso was contained in this license schedule when it was incorporated as a part of the 1940 Code. Moreover, this office has, as indicated by the above cited opinions, ruled on the question on several occasions, as to whether or not a license

for selling a specific commodity, where such commodity is sold off the vehicle, would be due in addition to the transient dealer's license. In this respect it has repeatedly answered the question in the affirmative and without reservation. See opinions heretofore cited.

The proviso which has obviously been overlooked clearly provides that where the transient dealer's license has been purchased in a particular county and a license is also levied under one or more of the other license schedules for the selling of a specific commodity or article, then this would not excuse the licensee from having to pay a license for the privilege of selling from the vehicle in that county one or more, as the case might be, of such commodities, provided that the special license or licenses for selling the commodity or commodities involved is higher than the transient dealer's license. This proviso then appears to be clear and to mean what it says and to say what it means. **State v. Bay Towing and Dredging Company,** 264 Ala. 187, 85 So. 2d 890, and **State v. Thames, Jackson, Harris Company,** 259 Ala. 471, 66 So. 2d 733, 735.

On the other hand, the proviso appears to say that if the license for selling the specific commodity or article is less than the transient dealer's license then it would not be due in that particular county.

Section 609, supra, requires in the first county in which the transient dealer does business from his truck a State license of $30.00 and a county license of $5.00, making a total of $35.00. In all other counties in this State in which the licensee sells off the same truck, he is not required to pay under Section 609 another State license, but is expressly required to pay a county license of $5.00 in each additional county in which he does business with the same truck. If the transient dealer uses more than one vehicle in his business, then Section 609 provides for a county license of $5.00 for each additional vehicle and in each county in which said additional vehicles are operated. Also, and in addition thereto, each said additional truck would require a $5.00 permit which is issued by the State Department of Revenue as a permit to operate the particular vehicle on the highways throughout the State.

The $5.00 permit, however, is not a part of the transient dealer's license, but is in addition thereto as a permit to operate the specific vehicle over the State highways. Thus, it is not to be confused with the $5.00 county license required also in each additional county where merchandise is sold from the vehicle by the transient dealer. Therefore, the permit is not to be considered as a part of the transient dealer's license, although it, too, is provided for in Section 609.

The matter of determining then whether or not in any given county the license for the privilege of selling a specific commodity

or article from the truck (place of business under the circumstances) is higher than the transient dealer's license as to that particular truck or vehicle would depend upon whether it is in the first county, in which the dealer has paid $35.00, or in any additional county where such transient dealer has only paid a $5.00 county license, when compared with the price of the license for the privilege of selling the specific commodity or commodities involved off the same vehicle and in the same county.

For illustration, and as you have asked particularly about the license for selling dice under Title 51, Section 508, supra, the license would not be exempt from the payment of the license under this Section, except in the county in which the transient dealer purchased the $35.00 State and county transient dealer's license. This is true because the dice dealer's license is levied in the amount of $10.00 for the State and $5.00 for the county, making a total of $15.00, which is less than the $35.00 which he paid for the transient dealer license in the first county, but more than the $5.00 county license which he paid for selling off the vehicle in each additional county. Thus, the transient dealer would owe both licenses in each county in which he sells off the particular truck, except the first county in which he would be due to pay only the transient dealer's license of $35.00.

The license for selling radios, Title 51, Section 578, supra, to which you also refer, is levied on a graduated scale and is measured according to the population of the city in which radios are sold, which somewhat complicates the matter. Whether or not however, the specific license for selling the article involved would be due can still be resolved by comparing the price of the license under the applicable scale in Section 578, supra, to the transient dealer's license purchased under the provisions of Section 609 in the particular county involved. If the license is higher under the particular scale in which the licensee falls under Section 578 in the city involved than the amount which he has paid for the transient dealer's license in the county, then he would also owe the specific license for selling radios, if he is selling radios at wholesale off the same truck or vehicle.

All former opinions of this office which are in conflict with this opinion are hereby modified and amended to the extent of such conflict to conform with the ruling herein set forth.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

November 16, 1965

Mr. E. L. Smith, Manager
Conecuh-Monroe Counties Gas District
P. O. Box 500
Evergreen, Alabama

Taxation — Municipalities — Exemptions — Licenses.

Exemption from taxation of gas districts organized under the provisions of Act No. 762, Acts of Alabama 1951, Volume 2, page 1319 (Title 51, Section 402 (47), et seq., Code of Alabama 1940, Recompiled 1958) as amended by Act No. 694, General Acts 1965, approved September 1, 1965, discussed generally.

Opinion by Assistant Attorney General Livingston.

Dear Sir:

Your request for an official opinion dated November 8, 1965, is as follows:

"I am writing for clarification regarding the taxation of the Conecuh-Monroe Counties Gas District, with the passage of Fite (House bill number 125). We would like a clarification on questions listed below.

"1. Is the Gas District required to file a State Sales Tax?

2. Is the Gas District required to pay State Use Tax?

3. Can the Gas District make application with State Revenue Department of motor vehicle for license plates?

4. Is the Gas District exempted from privilege license in the Municipality we serve?

5. If a Municipality which we serve in has City Sales Tax, is the Gas District subject to such Tax?"

The Act to which you refer is Act No. 694, General Acts 1965, approved September 1, 1965. This Act amended Sections 9, 14 and 16 of Act No. 762, Acts of Alabama 1951, Volume 2, page 1319 (Title 37, Sections 402 (47), et seq., Code of Alabama 1940, Recompiled 1958) which authorizes the incorporation of gas districts as public corporations of the State of Alabama for the purpose of acquiring, con-

structing, owning, operating and financing gas transmission systems and gas distribution systems for the use and benefit of those municipalities which join in and approve incorporation of such districts.

Section 16 of Act No. 762, supra (Title 37, Section 402 (62), Code of Alabama 1940, Recompiled 1958), prior to the 1965 amendment provided as follows:

> "Section 16. TAX EXEMPTION. All property and all income of any district incorporated under this act shall be exempt from all state, county, municipal and other taxation in the State of Alabama. All bonds of such district and the interest thereon shall be exempt from all state, county, municipal and other taxation in the State of Alabama. All deeds, mortgages, indentures of trust and other documents executed by or delivered to any such district shall be exempt from all state, county and municipal and other taxation in the State of Alabama."

The first sentence of Section 16, supra, was considered by the Supreme Court of Alabama in the case of **The Town of Hackleburg, Alabama v. Northwest Alabama Gas District**, 277 Ala. 355, 170 So. 2d 792. The Court stated:

> "This is an appeal by the Town of Hackleburg from a decree entered in a declaratory judgment action adjudging that a privilege license of 1½ percent of the gross receipts of business done the preceding year imposed pursuant to an ordinance enacted by the Town of Hackleburg was invalid under the laws and constitution of the State of Alabama. . . .
>
> "The record shows that in addition to the Town of Hackleburg, the towns of Hamilton, Guin, and Sulligent, and the cities of Haleyville and Winfield are all members of the Northwest Alabama Gas District.
>
> "Because of this diversity of membership and control, the Northwest Alabama Gas District must be considered as though a separate proprietory corporation and not merely as an arm, branch or agent of any single municipal member of the gas system. In this aspect the status of the appellee differs from that of a Water Works Board, or Gas Board, organized within a single municipality under the provisions of Article 5 (Water Works Board) and Article 6 (Gas Plants and Systems), of Title 37, Code of Alabama 1940. Water boards and gas boards organized pursuant to the above Articles are, under certain conditions and factual situations, treated as the municipality itself. See State ex rel. Richardson v. Morrow, Ala., 162 So. 2d 480. . . .

"The lower court found that the respondent (Town of Hackleburg) 'has no authority under the laws and Constitution of the State of Alabama to impose such tax upon complainant.'

"It is argued here, and we assume was argued below, that the tax was invalid because of the tax exemption granted to gas systems under the provisions of Sec. 402(62), Title 37, Code of Alabama 1940, and also that Section 91 of the Constitution inhibited such tax.

"Sec. 402(62), in parts pertinent to this review, provides:

" 'All property and all income of any district incorporated under this article shall be exempt from all state, county, municipal and other taxation in the state of Alabama.'

"The exemption thus granted is on the property and income of a gas district. The tax levied by the appellant is an excise tax on the privilege of operating a gas distribution business within the Town of Hackleburg, and is not a property or income tax. Estes v. City of Gadsden, 266 Ala. 166, 94 So. 2d 744. The tax is therefore not exempt under the provisions of Sec. 402(62).

"Section 91 of the Constitution does not inhibit the levying of this tax. This section exempts from all taxes the property of State, county, and municipal corporations. The Gas District is not the property of the Town of Hackleburg, but of the Northwest Alabama Gas District, and, as before stated, the tax is not a property Tax but an excise privilege license tax, which is not within the provisions of Section 91, supra."

Following the **Hackleburg** case, the Legislature by Act No. 694, supra, amended Section 16 of Act No. 762 to read as follows:

"Section 16. TAX EXEMPTION. All property and all income of any district incorporated under this act, and any such district itself, shall be exempt from all state, county, municipal and other taxation in the State of Alabama, **including, without limitation, privilege and license taxation.** All bonds of such district and the interest thereon shall be exempt from all state, county, municipal and other taxation in the State of Alabama. All deeds, mortgages, indentures of trust and other documents executed by or delivered to any such district shall be exempt from all state, county and municipal and other taxation in the State of Alabama provided that these exemptions shall not be retroactive in effect and shall not affect any taxes currently in existence nor any tax previously assessed whether collected or not. Provided further the provisions of this act shall not affect or be applicable to any existing contracts, bonds, **supporting taxes** or existing exemptions. **Nor shall it**

affect or be applicable to the refunding of any Gas District Corporations now incorporated on an existing debt, taxes or tax exemptions and **any municipality or county to continue in the future to levy and collect any tax now levied the passage of this bill notwithstanding.**" (Emphasis added.)

The above amendment to Section 16 is not free from ambiguity. However, taking all the provisions thereof together, particularly those underscored, it is my opinion that gas districts organized under Act No. 762, supra, as amended by Act No. 694, supra, are not liable for State sales tax on sales made by such gas districts or for State sales and use tax on purchases made by such gas districts on and after September 1, 1965. It is also my opinion that such gas districts are exempt from license tax on the purchase of license plates and may secure such plates from the License Division, State Department of Revenue, upon the payment of $1.00 required by Title 51, Section 701(1), Code of Alabama 1940, Recompiled 1958.

With respect to municipal privilege license tax and municipal sales tax, it is my opinion that such gas districts are liable for such taxes which were already levied and in effect on September 1, 1965, the effective date of Act No. 694, supra. The last sentence of Section 16, as amended, provides, in part, as follows:

"Nor shall it affect or be applicable to . . . any municipality or county to continue in the future to levy and collect any tax **now levied** the passage of this bill notwithstanding."

Under the provisions of Section 16, as amended, supra, it is my opinion that such gas districts will not be liable for any municipal privilege license tax or municipal sales tax levied after September 1, 1965, the effective date of Act No. 694, supra.

In view of the above, your questions are answered as follows:

1. No.
2. No.
3. Yes.
4. Yes, if the license tax is levied after September 1, 1965; no, if the license tax was in effect on September 1, 1965.
5. Yes, if the tax was in effect on September 1, 1965; no, if the tax is levied after September 1, 1965.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

November 24, 1965

Honorable Walter C. Head, Jr.
Director
Department of Veterans Affairs
CAPITOL

Veterans' Affairs

1. Only those veterans meeting State residence requirements who served in the armed forces between January 1, 1917 and November 11, 1918; September 16, 1940, and July 25, 1947; June 24, 1950, and January 31, 1955; or since January 1, 1964, are eligible for the benefits provided by Act No. 47, Acts of Alabama, 1951, as amended by Act No. 617, Acts of Alabama 1957, and Act No. 767, Acts of Alabama, 1965.

2. The purpose of the enactment of Act No. 767, Acts of Alabama, 1965, was to expand the coverage of Act No. 47, Acts of Alabama, 1951, so as to confer its benefits upon those who could not meet the requirement of one year's State residence before entrance into service but who have been bona fide residents of this State for five years immediately prior to filing for benefits under the act and confers upon all those veterans who could not have previously applied, a minimum of four years in which to do so.

3. The spouse or child must prove that their husband, father or mother, as the case may be, is or was a permanent resident of the State of Alabama, of at least one year's residence prior to his or her entrance into the service, in order to confer entitlement to the spouse and children of the veteran.

Opinion by Assistant Attorney General Anderson.

Dear Sir:

Your request for an official opinion, bearing date of September 10, 1965, is as follows:

"During the regular session of the Legislature 1965, Act 767, S-160 was enacted which further amends Act No. 47 H. 29 (Acts of Alabama, 1951, page 259). Your official opinion is requested in regard to the application of the Act. Your attention is also invited to Act 617, Sections 1, 2 and 3, Acts of Alabama 1957, codified as Title 60, Sections 82(1), 82(18), Code of Alabama.

"Act 767 amends Sections 4, 5 and 10 of said Act No. 47. The language in Section 4 of Act 767 is exactly the same as that contained in Section 4 of Act No. 47 with the exception that the following clause has been added:

> " 'Or who has been a bona fide resident of the State of Alabama for at least five (5) years immediately prior to filing application for benefits under this Act.'

"In Section 4 of Act 767 the following phrasing appears as excerpted and quoted here:

> " 'Or who served at any time subsequent to June 24, 1950, when the United States was, is or shall be engaged in hostilities with any foreign state, whether as a result of a declared war or not, and if he or she has been discharged or released from the service, under conditions other than dishonorable, shall be entitled to take any extension or correspondence course from any State college or university offering same, without the payment of any fees or charge for such extension or correspondence course. The veteran taking advantage of this provision of the Act must do so within four years from passage and approval thereof, or within four years from the date of his or her discharge, whichever occurs last.'

"The questions concerning for which we request your opinion in this particular section are as follows:

"1. May we consider that the so-called 'cold war' veterans (those with service after December 31, 1955, the termination of the Korean Conflict) are entitled to benefits under the Act and if so from what date may we consider such service began. Also, would all such 'cold war' veterans be entitled whether or not they served in an area of hostilities such as Vietnam?

"2. Does the act re-confer upon World War I, World War II and Korean veterans four (4) additional years from October 1, 1965, effective date of the act, to take advantage of an extension or correspondence course; if they are otherwise entitled.

"Section 2 of Act 767 amends Section 5 of Act No. 47 by adding the same clause as that quoted above. It will be noted that it is stated that any veteran who has lived in Alabama at least five (5) years immediately prior to filing application can qualify. We assume this to be for the veteran only since the Section also states that the wife, widow or child who makes application must produce evidence that their husband, father or mother, as the case may be, **was a permanent resident of the state for at least one (1) year prior to**

entrance into service. The question concerning for which we request your opinion of this section is as follows: (Underscoring supplied)

"If a veteran who qualifies under the five (5) year resident requirement and also has 40% or more service connected disability, does this also confer entitlement to his wife and children under Section 3 of Act No. 617, Acts of Alabama, Regular Session 1957?

"If your answer to the above question is in the affirmative, would it also confer entitlement to the children under Section 1 and widow under Section 2 of Act No. 617, if such veteran has died as a result of a wartime service connected disability, but had been a bona fide resident of Alabama for five (5) years immediately preceding death.

"We would appreciate an opinion as quickly as possible since the effective date of the Act is October 1, 1965, and we are now receiving applications from children of veterans who feel that they are entitled under the amended Act."

In my opinion, the so-called "cold-war" veterans are not entitled to benefits under this act unless they meet the service requirements of this act "when the United States was * * * engaged in hostilities with any foreign state." The use of the phrase "with any foreign state," appears to omit from the coverage of this act those residents who served in the armed forces after January 31, 1955, the end of the Korean Conflict, (See Quarterly Report of the Attorney General, Vol. 78, page 42), and before the beginning of the present hostilities in Viet Nam on January 1, 1964 (See Quarterly Report of the Attorney General, Vol. 119, page 39). Since the statute contains no requirement as to the area in which the service must be performed it would not be necessary that the qualified service be performed in an area of hostilities (Quarterly Report of the Attorney General, Vol. 119, page 39, supra).

The change wrought in the law by the passage of said Act 767 was the expansion of the coverage of the act to those veterans who could not meet the requirement of one year's residence of this State before entrance into service, but who have been bona fide residents of this State for five years immediately prior to filing for benefits under the act. Consequently, there is a distinct possibility that veterans of World War I, World War II and Korea who could not have qualified under the old one year requirements could now qualify under the new five year requirements. The statute provides that "the veteran taking advantage of this provision of the Act must do so within four years from passage and approval thereof * * *." The provision regarding the five year requirement was not effective until October 1, 1965. For this reason, it would seem that a four year additional period has been conferred upon those World War I, World War II and Korean War veterans who could not meet the one year's requirement but who can meet the five year requirement, within which they may take ad-

vantage of the provision of this act. Those veterans who could have applied for benefits under the old one year standards and did not, however, would not be entitled to any additional time.

Even though a veteran qualifies under the five year resident requirement and also has 40% or more service connected disability, proof of this is insufficient to confer entitlement to the spouse and children under Section 3 of said Act No. 617. Section 3 sets out the benefits which are available if the spouse or child are eligible. Section 5 sets out what must be proved, which is "that their husband, father, or mother, as the case may be, is or was a permanent resident of the State of Alabama, of at least one year's residence prior to his or her entrance into the service." Consequently, proof of the veteran's five years' residence before filing for benefits would not be sufficient.

The foregoing answer being in the negative eliminates the necessity of answering your final question.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

November 30, 1965

Mrs. Sara Blackwell
Clerk, Circuit Court
Colbert County
Tuscumbia, Alabama

Cost and Fees — Fair Trial Tax — Forfeitures.

1. Forfeiture case is separate and distinct from criminal prosecution and constitutes a civil action on the contract of bond.

2. Fair trial tax imposed on each criminal and quasi-criminal case under Act No. 60, Second Special Session 1965 is not to be imposed in forfeiture cases.

Opinion by Assistant Attorney General Webb.

Dear Mrs. Blackwell:

I have received your letter of November 4, 1965 in which you request an official opinion of this office as follows:

"There was passed by the Legislature of Alabama at the Second Special Session of 1965, Act No. 60, and approved September 30, 1965. The said Act provides for the levying and collection of a 'fair trial tax' upon each and every criminal or quasi-criminal case docketed in certain Courts of this State.

"I am the Circuit Clerk of the Circuit Court here in Colbert County, Alabama, and I am also the Ex-Officio Clerk of the Colbert Law and Equity Court.

"It has been, and is, the habit and custom of this office to make a separate docket sheet and give a half number to a bond forfeiture in a criminal case.

"I would like to know:

"1st. Is the forfeiture of a bond a new and different case from the criminal case?

"2nd. If the forfieture of a bond is actually a new and different case, is it a criminal or quasi-criminal case within the meaning of the Act above referred to, so that it is necessary to tax in said bond forfeiture the $1.00 'fair trial tax'? In other words where there is a criminal case in the Circuit Court or the Colbert Law and Equity Court $1.00 fair trial tax would be imposed, then if there was a bond forfeiture in said case should there be taxed an additional $1.00 'fair trial tax'?"

The Legislature, under the provisions of Act No. 60, Second Special Session 1965, approved September 30, 1965, imposed what is now known as the "fair trial tax" upon each and every criminal or quasi-criminal case docketed in any court created by authority of the Constitution or other laws of the State of Alabama, with the exception of those cases docketed in courts listed under Section 2 thereof, being the Supreme Court, the Court of Appeals, and municipal courts (when the charge is for the violation of an ordinance).

The bail bond has been to be a contract of obligation on the part of the defendant and his bondsmen to perform the acts required in the bond or to suffer a forfeiture. See **State v. Esdale,** 253 Ala. 550, 45 So. 2d 865. A forfeiture case brought on the bail bond is a separate and distinct proceeding from the criminal case and constitutes a civil action on the contract of bond. Quarterly Report of Attorney General,

Volume 15, pages 212 and 298; also **Copeland v. Jefferson County**, 192 Ala. 12, 68 So. 285.

I am, therefore, of the opinion that the fair trial tax imposed under the provisions of Act No. 60, supra, is not applicable to forfeiture cases.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

December 8, 1965

Honorable V. O. Capps
Mayor, City of Prichard
Prichard, Alabama

Buildings — Municipalities.

The authority of a municipality to abate nuisances discussed generally.

Opinion by Assistant Attorney General Gish.

Dear Mr. Capps:

Your request for an official opinion, dated November 17, 1965, is as follows:

"Will you please be kind enough to furnish us your official opinion on the following matter:

"The City of Prichard is making a systematic survey of housing conditions within the City in connection with our Workable Program. We have adopted the Southern Standard Building and Housing Code as our official Building and Housing Codes. We find there are many sub-standard and dilapidated structures which are unsafe for human occupancy and the last known owners are notified and given 30 days to remove same. It is our understanding that the laws of Alabama provide that a municipality in the exercise of its police power may legally declare these substandard and dilapidated structures a nuisance, and upon the owners failing or refusing to abate the nuisance by removal of same, the City may remove same from private property and charge the cost of such removal to the property owner.

"Please furnish us, at the earliest possible time, your official opinion as to whether (1) the City of Prichard may under its police power remove condemned buildings from private property and charge the cost to the property owner and (2) should the City adopt a special ordinance other than its building and housing code ordinance."

Title 37, Section 455, Code of Alabama 1940, reads in part as follows:

"Municipal corporations may, from time to time, adopt ordinances and resolutions not inconsistent with the laws of the state, to carry into effect or discharge the powers and duties conferred by this title, and provide for the safety, preserve the health, promote the prosperity, improve the morals, order, comfort, and convenience of the inhabitants of the municipality, . . ."

Title 37, Section 505, Code of Alabama 1940, reads as follows:

"All cities and towns of this state shall have the power to prevent injury or annoyances from anything dangerous or offensive, or unwholesome and to cause all nuisances to be abated and assess the cost of the abating the same against the person creating or maintaining the same."

Title 37, Section 506, Code of Alabama 1940, authorizes a municipality to maintain a bill in equity to enjoin and abate a public nuisance. **Terry v. City of Hanceville,** 268 Ala. 664, 109 So. 2d 842.

While the statutes quoted herein authorize a municipality to abate nuisances within its corporate limits and assess the cost of abating the same against the person creating or maintaining the same, the prime question presented by your request concerns the matter of affording due process of law to the owner of a structure which the officials of the City of Prichard wish to declare to be a public nuisance.

In the event that the City of Prichard determines that a structure is a public nuisance and abates the same under the provisions of Section 505, supra, the question of whether the owner of such structure was given ample notice and opportunity to be heard as required by his constitutional right to receive due process of law would present itself to the courts for judicial determination. Each case would be decided upon its own facts. We know of no case which the courts of this State have answered the problem presented by your request.

The safer method to accomplish the purpose suggested by your request would be to maintain a bill in equity as authorized by Section 506, supra.

Since we do not have copies of the ordinances of the City of Prichard, we express no opinion in regard to whether additional legislation by the governing body of said City is needed in the premises.

It should here be pointed out that the opinions of the Attorney General protect public officials from liability to the State, counties and municipalities only. Title 55, Section 241, Code of Alabama 1940, as amended by Act No. 97, Acts of Alabama 1963, page 272. Any question of the liability of a public official to an individual presents itself to the courts for judicial determination.

Due to the nature of the problem presented, we have made no attempt to specifically answer the questions stated in your request. We trust that this general discussion of the applicable law furnishes you the desired information.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

December 14, 1965

Honorable Walter S. Houseal
Superintendent of Insurance
Department of Insurance
CAPITOL

Insurance — Taxation.

Act No. 694 of 1965 Regular Session exempts gas districts from payment of gross premium taxes otherwise required by Section 22 of Unauthorized Insurers Act, but that exemption does not extend to brokers on taxes due under Section 18 of Unauthorized Insurers Act.

Opinion by Assistant Attorney General Clark.

Dear Sir:

Your request for an official opinion, bearing date of December 7, 1965, is as follows:

"I would appreciate your official opinion in answer to the following questions:

"Does Act No. 694 of the 1965 Regular Session of the Alabama Legislature have the effect of exempting gas districts from the payment of the premium taxes required by the Unauthorized Insurers Act on insurance placed with an unauthorized foreign insurer? Section 18 of the Unauthorized Insurers Act requires surplus line brokers to pay this tax when they have been instrumental in placing coverage. Section 22 of this Act requires the insured to pay this tax directly to the state when the coverage has been independently procured. Please advise whether Act No. 694 exempts payment in either case.

"We have had this question presented to us specifically by a surplus line broker who placed such coverage for the Geneva County Gas District, Geneva, Alabama."

Section 16, Act No. 694, General and Local Acts, Regular Session 1965, provides as follows:

"Section 16. TAX EXEMPTION. All property and all income of any district incorporated under this act, and any such district itself, shall be exempt from all state, county, municipal and other taxation in the State of Alabama, including, without limitation, privilege and license taxation. All bonds of such district and the interest thereon shall be exempt from all state, county, municipal and other taxation in the State of Alabama. All deeds, mortgages, indentures of trust and other documents executed by or delivered to any such district shall be exempt from all state, county and municipal and other taxation in the State of Alabama provided that these exemptions shall not be retroactive in effect and shall not affect any taxes currently in existence nor any tax previously assessed whether collected or not. Provided further the provisions of this act shall not affect or be applicable to any existing contracts, bonds, supporting taxes or existing exemptions. Nor shall it affect or be applicable to the refunding of any Gas District Corporations now incorporated on an existing debt, taxes or tax exemptions and any municipality or county to continue in the future to levy and collect any tax now levied the passage of this bill notwithstanding."

Since the premium tax in question is a State tax, the gas district would not be required to pay this tax directly to the State when coverage is independently procured by it after passage of this Act, since Act No. 694, supra, clearly exempts it from the taxation set out in Section 22 of Act No. 521, General and Local Acts 1963, page 1112. Opinion of the Attorney General, dated November 16, 1965 to Mr. E. L. Smith, Manager, Conecuh-Monroe Counties Gas District.

However, there is no exemption granted to surplus line brokers from payment of the gross premium tax set out in Section 18 of Act

No. 521, supra, when they have been instrumental in placing coverages.

Section 18 of Act No. 521, supra, is as follows:

"Section 18. TAX ON SURPLUS LINE BROKERS. (1) On or before the first day of March each year the surplus line broker shall remit to the State Treasurer through the Superintendent, as a tax imposed for the privilege of transacting business as a surplus line broker in this state, a tax of four percent (4%) on the direct premiums, less return premiums and exclusive of sums collected to cover state or federal taxes, on surplus line insurance subject to tax transacted by him during the preceding calendar year as shown by his annual statement filed with the Superintendent.

"(2). If a surplus line policy covers risks or exposures only partially in this State, the tax so payable shall be computed on the proportion of the premium which is properly allocable to the risks or exposures located in this State."

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

December 15, 1965

Honorable Robert J. Belcher
Mayor, City of Fultondale
Fultondale, Alabama

Municipalities — Streets.

A municipality may use its employees and equipment to pave both its public streets and parking areas located on the property of private business establishments where such businesses compensate the municipality in an amount which equals or exceeds the cost of paving the private areas by furnishing the material used to pave both the public and private areas.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, dated October 21, 1965, is as follows:

"The City of Fultondale, for the purpose of beautifying the City, proposes to use equipment owned by the City of Fultondale and employees employed by the City to asphalt previously unpaved right-of-ways and parking areas adjacent thereto which are owned by private individuals operating locating local business establishments and it is proposed that the private individuals operating such local business establishments pay only for asphalt and other materials used both on the public right-of-ways and on the private parking areas adjacent without a charge being made for the use of city equipment and employees.

"Will you please give me an official opinion on the following question:

"1. Will the use of city equipment and employees, part of which is used on private business property, for the purpose of beautifying the city where the entire cost of materials used both on public right-of-ways and on adjacent private property is paid for by the owners of the local business establishments be a legal and proper use of city equipment and employees?"

Reference is also made to your letter of November 18, 1965, which reads as follows:

"Recently I requested an opinion from your office relative to paving certain areas in the City of Fultondale. I would like to explain just what the City proposes to do. There are several commercial establishments located along U.S. Highway 31 North which is a four lane highway and others along two county maintained roads which are two lanes.

"The City proposes to pave the area between the paved portion of these roads which is on the state right-of-way and the property owned by different individuals and at the same time pave the parking area in front of these establishments. The property owners are to pay for all materials used and the City will furnish the equipment as well as the operators. This work is to be done for the convenience of the general public.

"I am enclosing a breakdown on one job which has been completed which I believe will be close percentage wise on the other proposed jobs. Roughly speaking the owners will be paying about 75% of the overall cost."

The Constitution of Alabama 1901, Section 94, prohibits municipalities from expending public funds for private purposes. It could be argued that this constitutional provision prohibits the City of Fultondale from performing the work contemplated by your request.

However, in an opinion of this office reported in Quarterly Report of Attorney General, Volume 11, page 153, it was held that a county may lease idle tractors and road equipment to a private individual. This ruling was predicated upon the fact that the machinery in question was not being used at the time by the county in its road and bridge work and that a just compensation would be received by the county. Cf. Quarterly Report of Attorney General, Volume 64, page 39.

This office has also held in an opinion to Honorable Chester Walker, Judge of Probate, Tuscaloosa County, under date of May 13, 1954 (not reported), that a county may use its road machinery on private roads where a fair price is paid by the owners of private roads, to reimburse the county for the expense of the use of the equipment and operators, with a reasonable amount for depreciation of the property. This opinion also held that a county may sell gravel to private individuals at a rate paid by the county for the gravel, plus a reasonable compensation to reimburse the county for the expense of hauling the gravel to such individuals.

In an opinion rendered to the City Commission, City of Gadsden, under date of March 17, 1955 (not reported), this office stated that the City of Gadsden may perform work such as building driveways, filling in lots, and grading lots on private property provided that a reasonable compensation is paid to the municipality by the individuals for whom such work is done as a reimbursement of the cost of such work.

The information furnished by you shows that the materials to be purchased by the business establishments benefited will compensate the municipality in full for the cost of paving those areas located on private property.

Therefore, I am of the opinion that under the facts stated in your request the City of Fultondale is authorized to use its employees and equipment to perform the work contemplated.

For this reason, your question is answered in the affirmative.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

December 20, 1965

Honorable Raymond E. Higdon
Tax Collector
Cullman County
Cullman, Alabama

Poll Tax — Military Service — Exemption.

All persons who have honorably served in the Armed Forces of the United States since January 1, 1964, are exempt from the payment of poll tax.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion bearing date of November 15, 1965, is as follows:

"As Tax Collector for Cullman County, Alabama, I request your official opinion concerning when hostilities began and poll tax exemptions for Veterans in the Vietnam conflict.

"You are, of course, familiar with the Amendment to the Constitution, Number XC, which states in part, 'No person who honorably served . . . when the United States was, is or shall be engaged in hositlities, whether as a result of a declared war or not. . . .'

"Our specific inquiries are (1) what is the date of the beginning of the hostilities of the Vietnam War, and (2) on what date, if at all, persons who have honorably served in the Vietnam War are exempt from paying poll tax?

"Your immediate opinion on these subjects is urgently requested."

On April 24, 1965, President Lyndon B. Johnson issued Executive Order 11216 designating Vietnam and the waters adjacent thereto as a combat zone. This Order further provided that the date of commencement of combat activities in such area to be January 1, 1964.

In my opinion, this Executive Order activates Amendment XC to the Constitution of 1901 as such Executive Order states that the United States is engaged in hostilities with a foreign power.

You are, therefore, advised that under the provisions of said section all persons who were in the active military service and honorably

serving therein on January 1, 1964, are exempt from the payment of poll tax. This exemption applies to all persons serving in the Armed Forces of the United States whether they are actually serving in the Vietnam combat zone or not. Cf. Quarterly Report of Attorney General, Vol. 119, page 39.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

December 27, 1965

Honorable Ira L. Myers, M.D.
State Health Officer
State Office Building
Montgomery, Alabama

Health and Health Department—County Board of Health—Officers and Offices.

1. A county board of health may advise and direct the official activities of county health officers, but may not in doing so be in conflict with the regulations of the State Board of Health or the administrative orders of the State Health Officer.

2. Where a State regulation prohibits all bulk milk dispensers unless any such bulk milk dispenser may be approved by the Health Officer, the County Board of Health, if it desires to permit the use of any such dispenser may not circumvent the requirement of the State Board of Health that such dispenser be approved by the Health Officer.

3. A county health officer is not ex officio a member of the county board of health, but a physician, even though a county health officer, if he becomes a member of the county medical society, may be duly elected to the county board of censors and as such is a bona fide member of the county board of health.

Opinion by Assistant Attorney General Robert F. Miller.

Dear Sir:

Your request for an official opinion bearing date of October 28, 1965, is as follows:

"Section 9, Item 12, Regulations Governing the Manufacture, Preparation, Display and Service of Foods, Confections, and Beverages, adopted by the State Board of Health on February 20, 1957, requires that:

" 'All milk and fluid milk products shall be served only in the original containers in which they were received from the distributor, or from mechanical dispensers which have been approved by the health officer.'

"Section 1 of the regulation defines 'health officer' to be either the State Health Officer, the county health officer, or his representative.

"At the time this State Board of Health regulation went into effect, the Sumter County Board of Health had in effect a regulation adopted on June 1, 1954, which provided that:

" 'The use of dispensing machines or apparatus by which milk is served from bulk is specifically prohibited.'

"On April 2, 1957, almost immediately after the State Board of Health had adopted its regulation, the Sumter County Board of Health readopted the original wording of its 1954 regulation proscribing the use of bulk milk dispensers.

"The Sumter County Board of Health now desires to be advised on the following questions:

"1. Whether the County Board of Health can or should rule on legality of the use of bulk milk dispensers, or is it left up to the County Health Officer.

"2. Whether the County Health Officer can serve as a member of the County Board of Health.

"It is requested that I be given your official opinion on these questions."

Question 1. According to your letter the Sumter County Board of Health has prohibited the dispensing of milk from bulk containers. This is in my opinion a valid regulation, because it is not in conflict

with the State regulation. Therefore, any question regarding bulk dispensing of milk in Sumter County is moot. It cannot be done under the present county regulation.

Your first question indicates that the Sumter County Board of Health is in doubt as to whether it or the County Health Officer can or should "rule on legality of the use of bulk milk dispensers." Although the question cannot arise in Sumter County, you are advised that the State regulation does not tell the County Board of Health that it **must** allow mechanical dispensers. On the contrary the State regulation says all milk and fluid milk products can be served legally only in the distributor's original container. There is only one exception—milk may be served from a mechanical dispenser if the dispenser has been approved by the health officer. Whether approval be by the County Health Officer or the State Health Officer is immaterial since the County Health Officer, as well as the County Board of Health, is under the general supervision and control of the State Health Officer. Section 9 of Title 22, Code of Alabama 1940, last reenacted by Act No. 437, H. 53, 1965 Regular Session of the Legislature of Alabama. But no question arises about who approves bulk dispensers because there can be no bulk dispensers in Sumter County under the present regulations.

Under a different county regulation the county board could, if it so desired, permit bulk dispensers, but it must require approval by the Health Officer, because the State regulation restricts the use of bulk dispensers in this manner. This is not to say that the State restriction is the only restriction. The County Board may not substitute another agency's approval in lieu of the Health Officer's approval, but further reasonable restrictions, may be added—for example it may limit the use of dispensers in Sumter County to those approved by the Health Officer **and** the County Board of Health, or to those dispensers that are glass lined or made of stainless steel **and** approved by the Health Officer.

If the County Board proposes a specific regulation you may submit the text of that proposal to this office for comment.

Question 2. I find no prohibition, constitutional or otherwise, preventing the County Health Officer from being also a member of the County Board of Health.

This is not to say that a County Health Officer is, ex officio, a member of the County Board of Health. It is merely to say that nothing has been found in the law of Alabama (including, in this case, the Constitution of the Medical Association of the State of Alabama), to prevent a physician, who has been properly appointed as a County Health Officer, from moving to his county, becoming a member of the

County Medical Society, and then being elected to the County Board of Censors. In other words, there is nothing in the law to automatically make the County Health Officer a member of the County Board of Health; but neither is there anything in the law which would prevent the Board from electing one of its members as County Health Officer and letting him continue to serve on the Board.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

INDEX

QUARTERLY REPORT OF THE ATTORNEY GENERAL FOR THE PERIOD FROM OCTOBER 1, 1965 THROUGH DECEMBER 31, 1965

— A —

ACTS:

Page

GENERAL AND LOCAL ACTS 1965:
Act No. 767 (Veterans Educational Benefits) 34

GENERAL AND LOCAL ACTS 1965:
Act No. 60, Second Special Session
(Fair Trial Tax) 37

— B —

BONDS:

Fair Trial Tax — in criminal and quasi criminal cases—
not applicable to bail bond forfeiture cases 37

— C —

CODE OF ALABAMA 1940, RECOMPILED 1958:

Title 28
Section 2 (Contract of Insurance defined) 21

Title 37
Sections 505 and 506 (Abatement of Nuisances) 39

Title 51
Section 402 (47), et seq. 30
Section 609 (Transient Dealers) 25
Section 693(2) (License for Pickup Trucks) 8
Section 703 (License for Small or Semi-Trailers) 7
Section 706 (Transfer of Motor Vehicle Ownership
Licenses) 17
Section 884 (Tax Lien on Motor Vehicles) 12

Title 60
Section 82 (1 & 18) (State Educational Benefits
for Veterans) 34

CONSTITUTIONALITY:

Ordinance authorizing flat expense allowance for mayor
as reimbursement for expenses 10

CONTRACTS:

Municipalities — contract with nonprofit concern for
public relations work with United States 15

COSTS AND FEES:

Fair Trial Tax — in criminal and quasi criminal cases — not applicable to bail bond forfeiture cases 37

COUNTY BOARDS OF HEALTH:

Authority of County Board of Health over County Health Officers — consideration of regulations and orders of State Board of Health and State Health Officers 47

County Health Officer may be member of County Board of Health 47

— E —

ELECTIONS:

Poll tax — persons in armed forces since January 1, 1964 (Vietnam Conflict) exempt from payment 46

EXEMPTIONS:

Gas districts — exemptions from taxation discussed generally 30
Gas districts — insurance gross premium tax exemption 41
Poll tax — persons in armed forces since January 1, 1964 (Vietnam Conflict) exempt from payment 46

EXPENSES:

Ordinance authorizing flat expense allowance for mayor as reimbursement for expenses 10

— G —

GAS DISTRICTS:

Taxation — exemptions discussed generally 30
Insurance gross premium tax — exemption from 41

— H —

HEALTH AND HEALTH DEPARTMENT:

Authority of County Board of Health over County Health Officers — consideration of regulations and orders of State Board of Health and State Health Officers 47

County Health Officer may be member of County Board of Health 47

HIGHWAYS AND HIGHWAY DEPARTMENT:

Use of city employees and equipment on public streets and private parking areas — when justified 43

— I —

INSURANCE:

Licenses — agents for Nationwide Motor Clubs issuing bail bond and accident coverage 21

Gas districts — exemption from gross premium tax 41

— L —

LICENSES:

Small or semi-trailers pulling 1500 pounds 7

Pickup trucks as only mode of transportation 8

Mobile County — application of penalty for delinquent transfer of motor vehicle ownership licenses 17

Insurance — agents for Nationwide Motor Clubs issuing bail bond and accident coverage 21

Transient dealers — cases where license for selling specific commodity is higher than transient dealers license 25

— M —

MILITARY AND NAVAL AFFAIRS:

State educational benefits for veterans — Vietnam Conflict included and five-year residence discussed 34

Poll tax — persons in armed forces since January 1, 1964 (Vietnam Conflict) exempt from payment 46

MOBILE COUNTY:

Application of penalty for delinquent transfer of motor vehicle ownership licenses 17

MOTOR VEHICLES:

Licenses — small or semi-trailer pulling 1500 pounds 7

Licenses — pickup trucks as only mode of transportation 8

Taxation — enforcement of tax lien which attaches automatically at time taxes become assessable 12

Mobile County — application of penalty for delinquent transfer of motor vehicle ownership licenses 17

MUNICIPALITIES:

Ordinance authorizing flat expense allowance for mayor as reimbursement for expenses 10

Contract with nonprofit concern for public relations work with United States 15

Gas districts — exemptions from taxation discussed generally 30

Nuisances — authority to abate 39

Use of city employees and equipment on public streets and private parking areas — when justified 43

— N —

NUISANCES:

Authority of municipality to abate 39

— O —

OFFICERS AND OFFICES:

Ordinance authorizing flat expense allowance for mayor as reimbursement for expenses 10

County Health Officer may be member of County Board of Health 47

— P —

POLL TAX:

Persons in armed forces since January 1, 1964 (Vietnam Conflict) exempt from payment 46

SCHOOLS:

State educational benefits for veterans — Vietnam Conflict included and five-year residence discussed 34

STATE BOARD OF HEALTH:

Authority of County Board of Health over County Health Officers — consideration of regulations and orders of State Board of Health and State Health Officers 47

County Health Officers may be member of County Board of Health 47

— T —

TAXATION:

Motor vehicles — enforcement of tax lien which attaches automatically at time taxes become assessable 12

Gas districts — exemptions from taxation discussed generally 30

Gas districts — insurance gross premium tax exemption 41

TRAILERS:

Licenses — small or semi-trailer pulling 1500 pounds 7

TRANSIENT DEALERS:

Licenses — cases where license for selling specific commodity is higher than transient dealers license 25

TRIAL TAX:

Fair Trial Tax — in criminal and quasi criminal cases — not applicable to bail bond forfeiture cases 37

— U —

UNITED STATES:

Municipalities — contract with nonprofit concern for public relations work with United States 15

— V —

VETERANS:

State educational benefits — Vietnam Conflict included and five-year residence discussed 34

INFORMAL OPINIONS

During the period covered by this Quarterly Report of the Attorney General, October 1, 1965 through December 31, 1965, the Attorney General rendered the following informal opinions. These informal opinions are not published in the Quarterly Report.

Subject Matter	Addressee	Date	File No.
COSTS AND FEES			
Crenshaw County — Fines and Forfeitures	Josephine J. Golden	Oct. 15	66
Highways — Fines and Forfeitures	W. R. Draughon	Nov. 9	96
Salaried Sheriffs — Disposition	W. Cooper Green	Oct. 25	46
Sheriffs — Removal	Thornton Fleming	Nov. 10	131
Solicitors — Disposition	Joe Macon	Oct. 25	Sol. File
Solicitors — Disposition	R. L. Hundley	Dec. 2	Sol. File
Solicitors — Municipal Court	Julian Swift	Nov. 10	132
COUNTIES			
Barbour — Expenses	J. Gorman Houston	Dec. 14	159
Calhoun — Clerks	Richard Forrest Dobbins	Nov. 1	114
Colbert — Highways and Highway Department	John G. Burns	Dec. 30	281
Conecuh — Clerks	Laura Northcut	Oct. 14	73
Conecuh — Clerks	Reo Kirkland	Oct. 14	1
Courthouses — Health and Health Department	Tom W. Turner	Oct. 18	61
Employees and Employers — Lapel Pins	James E. Moore	Nov. 30	193

Subject Matter	Addressee	Date	File No.
Highways and Highway Department — Commissioners	W. M. Cousins, Jr.	Nov. 24	42
Highways and Highway Department — Commissioners	J. P. King	Nov. 30	192
Investigations — Sheriffs	J. Gorman Houston, Jr.	Nov. 19	159
Juries — Compensation	Calvin L. Vest	Nov. 19	155
Morgan — Microfilming	T. C. Almon	Nov. 1	58
Pickens — Clerks	E. W. Lee	Oct. 22	50
Torts — Motor Vehicles	Thomas J. Baber	Nov. 22	170
Walker — Employees and Employers	David C. Akins	Nov. 4	93
Walker — Expenses	David C. Akins	Nov. 4	93
Walker — Officers and Offices	David C. Akins	Nov. 5	93
CRIMINAL LAW			
Attorneys — Indigents	John S. Miller, Jr.	Nov. 22	168
Blount County — Appeals	R. G. Kelton	Oct. 25	45
Drivers License — Justices of the Peace	R. A. Hail, Jr.	Dec. 22	271
Drivers License — Learners Permit	T. L. Payne	Dec. 8	Dept. Pub. Saf.
Firearms — Transportation	C. W. Russell	Nov. 9	Dept. Pub. Saf.
Fireworks — Legality	Steve Hubbard	Dec. 8	219
Highway Violations — Lee County	C. W. Russell	Nov. 5	Dept. Pub. Saf.
Justices of the Peace — Appearances	Robert E. Wilson	Dec. 10	236
Justices of the Peace — Jurisdiction	C. T. Dean	Dec. 3	194
Justices of the Peace — Jurisdiction	Robert E. Wilson	Dec. 10	236
Justice of the Peace — Municipalities	Sam Stewart	Nov. 29	190
Justices of the Peace — State at Large	W. T. Thames	Nov. 29	16
Lotteries — Sales Promotion	Johnston and Associates	Nov. 18	151
Motor Vehicles — Tires	William S. Mitchell	Dec. 7	228

Subject Matter	Addressee	Date	File No.
ELECTIONS			
Constitutional Amendments — Notices	George C. Wallace	Nov. 5	Gov. Off.
Election Day — Intoxicating Liquors	Austin Frame	Dec. 7	224
Municipalities — Constitutional Amendments	R. S. Limbaugh	Oct. 14	75
Poll Tax — Special Elections	David M. Nettles	Nov. 22	163
Registration — Constitutional Amendments	Susie Kuffskie	Oct. 6	33
Supplies — Counties	Reo Kirkland	Oct. 5	1
Voting Machines — Validity	David M. Nettles	Dec. 16	163
INSURANCE			
Deposits — Release	Mary T. Garner	Dec. 8	St. Treas.
Deposits — Release	Mary T. Garner	Dec. 13	St. Treas.
Hospitals — Workmen's Compensation	Robert K. Oliver	Nov. 5	94
Junior Colleges — Theft	Woodfin Patterson	Dec. 21	263
Liquefied Petroleum Gas Board — Liability	Bill Cassity	Nov. 1	Ala. L.P. Gas Bd.
State Comptroller — Duplicate Payments	John Graves	Dec. 29	St. Compt.
State Employees Insurance Board — Expenses	Raymond D. Fowler	Oct. 26	90
Ticket Agents — Licenses	Walter S. Houseal	Dec. 28	Ins. Dept.
MUNICIPALITIES			
Butane Gas — Sales Tax	B. K. Walker, Sr.	Oct. 6	18
City Limits — Schools	C .E. Peacock	Nov. 1	95
Employees and Employers — Hiring	John V. Duck	Dec. 28	275
Industrial Development — Appropriations	Earle C. Moody	Nov. 3	102

Subject Matter	Addressee	Date	File No.
Industrial Development — Appropriations	B. B. Sanford	Nov. 3	117
Motor Vehicles — Licenses	Richard C. Lacey	Oct. 6	17
Police — Employment	J. T. Maddox	Nov. 12	130
Water — Discontinuance	Myra Sutton	Oct. 14	74
OFFICERS AND OFFICES			
Abolition — Personnel Board	Tom J. Ventress	Nov. 29	189
Boards of Equalization — Compensation	Billy Patton	Nov. 9	142
Boards of Registrars — Compensation	Joe W. Myrick	Nov. 12	129
Constables — Jurisdiction	Alvin Moore	Dec. 8	221
Dept. of Public Safety — Appointments	C. W. Russell	Nov. 9	Dept. Pub. Saf.
Etowah County — Barbers	W. B. Long	Oct. 28	85
Justices of the Peace — Garnishments	G. V. Sanders	Dec. 6	218
Legislature — Constables	Francis S. Falkenburg	Dec. 1	211
Municipalities — Insane Hospitals	R. L. McKinley	Dec. 1	212
Municipalities — Justices of the Peace	Frank W. Babacy	Oct. 26	83
SCHOOLS			
Admission — Age	E. A. Grouby	Oct. 18	60
Admission — Age	Edith T. Owen	Nov. 22	166
Attendance — Fees	Wm. B. Smith, Jr.	Oct. 15	59
Colleges and Universities — Intoxicating liquors	John P. Cummer	Oct. 22	53
Conecuh County — Salary and Expenses	Harvey G. Pate	Nov. 22	176
Dale County — Allowances	Joe H. Payne	Oct. 26	82
Dentists — Scholarships	Joseph G. Stewart	Nov. 15	144
Junior Colleges — Scholarships	W. W. Weatherford	Oct. 5	3
Lamar County — Compensation	Edwin Allen	Nov. 10	128

Subject Matter	Addressee	Date	File No.
Lawrence County — Allowances	Reneau P. Almon	Nov. 22	164
Teachers — Hiring	R. D. Simpson	Oct. 22	52
Tuition Grants — Segregation	A. R. Meadows	Nov. 2	Dept. Ed.
STATE AND STATE DEPARTMENTS			
Board of Cosmetology — Attorneys	Billie J. Jehle	Dec. 13	Bd. of Cos.
Convicts — Liquor Experiments	A. F. Lee	Nov. 10	Dept. of Corr. & Instit.
Educational Television Commission — Employees	Raymond D. Hurlbert	Dec. 7	225
Mental Health Board — Funds	J. S. Tarwater	Dec. 6	235
Pensions and Securities — Infants	James T. Strickland	Dec. 6	202
Physical Therapy Board — Appropriations	James V. Jordan	Nov. 23	Dept. Finance
TAXATION			
Filing Tax — Churches	T. C. Almon	Oct. 13	58
Filing Tax — Mortgages	Guy Hunt	Nov. 23	178
Licenses — Architects or Engineers	Hugh D. Adams	Nov. 5	St. Bldg. Comm.
Licenses — Commission Merchants	L. Gordon Scarboro	Nov. 17	143
Licenses — Hunting	R. B. Berry	Nov. 3	115
Licenses — Physical Therapy Board	Martha Bryan	Nov. 24	81
Licenses — Veterans Exemption	M. C. Freeman	Oct. 11	37
State Docks — Contractors	Joseph Langan	Oct. 6	26